

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 916 of 1989
With
FIRST APPEAL No. 316 of 1989

For Approval and Signature:

HONOURABLE MR. JUSTICE R.S.GARG

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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REKHABEN WD/O MAGANMAL MULCHAND GOPALANI & 7 -
Appellant(s)
Versus
RAJULA GURJAR & 2 - Defendant(s)

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Appearance :

MR KM PATEL for Appellant(s) : 1 - 8.
MR DC SEJPAL for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR. JUSTICE R.S.GARG

Date : 08/08/2007

ORAL JUDGMENT

Shri K.M. Patel, learned counsel for the

appellants in First Appeal No. 916 of 1989; Shri D.C. Sejpal, learned counsel for the appellants in First Appeal No.316 of 1989.

2. Each of the appellant, being aggrieved by the award dated 1.11.88, passed by the MAC Tribunal [Main], Ahmedabad [Rural] in MAC Petition No. 851 of 1984 is before this Court. The claimants have filed appeal for enhancement while the original non-claimants have filed the appeal submitting inter alia, that the learned Tribunal was absolutely unjustified in making the award in favour of the claimants.

3. The short facts necessary for disposal of the present appeals are that after the person was hit by a truck on 6.6.84 at about 9.15 a.m. near Gandhinagar Vidhansabha S.T. Bus Stand, a report came to be lodged with the police, the alleged eye witness gave truck number and also stated that the truck belonged to the Military. Certain investigations were made and thereafter, the police proceeded further. It appears that the present claimants, being widow of the deceased, minor children and father and mother had filed

the Claim Petition submitting inter alia that on a later occasion, during course of the investigations, it came on the records that the truck number was 770-26386-K-MES and the respondent no.1 Rajula Gurjar was driving the vehicle, they claimed certain amounts. The non-claimants filed their written statement submitting that the truck belonging to the Military was not involved in the accident; Rajula Gurjar was not driving the offending vehicle and as false allegations have been made against the non-claimants, the matter deserves dismissal. The parties led evidence during course of the trial. The learned Tribunal, after hearing the parties held that wrong number of the truck was given in the FIR but the fact would still remain that the truck belonged to the Military. The Tribunal also observed that immediately after the accident, driver Rajula Gurjar went on leave for eight days, which will show that his conscience was biting him and therefore, he had proceeded on leave. The Tribunal also held that the evidence available

on the records would prove the involvement of the driver Rajula Gurjar and would also show that he was driving the vehicle rashly and negligently. After holding so, it made an award in the sum of Rs. 2,57,000/- with 12% interest in favour of the claimants.

4. Shri D.C. Sejpai, learned counsel for the appellants in First Appeal No. 316 of 1989 challenging the correctness, validity and propriety of the award, submitted that in absence of any evidence that Rajula Gurjar was driving the vehicle, he could not be held liable. His further submission is that the evidence available on the records would show that the Military personnel were maintaining the complete records about the whereabouts of the vehicles and on the said date, Rajula Gurjar was not driving the offending vehicle. He submitted that in absence of the evidence which could connect rash and negligent driving of Rajula Gurjar with the accident, the award could not be made in favour of the claimants.

5. Shri K.M. Patel, learned counsel for the

respondents-claimants submitted that from the cross-examination of the non-claimants, it would clearly appear that they are not maintaining the complete records and they were unable to say that at what time, any truck was given to Rajula Gurjar. He also submitted that even if Rajula Gurjar was not driving the vehicle, then too, in view of the fact that the truck belonged to Military, owner of the truck could be held liable. He also submitted that in a claim case, driver may not be necessary party and assuming Rajula Gurjar was not driving the vehicle, then too, the Tribunal could hold that the Military vehicle was involved in the accident. Shri Patel also submitted that present is a case where amount deserves to be enhanced in favour of the claimants.

6. In a case of accident, primary liability is of the driver. When a party comes before the Court and says that the driver was rash and negligent while driving a particular vehicle and, in view of the said rash and negligent driving, owner of the vehicle would be liable, then, such

allegations are required to be proved. True it is, that civil matter would be decided on strength of the preponderance of probability but a civil matter cannot be decided simply on the basis of the surmises, conjectures or on the guess-work. In the present case, from the First Information Report, it would clearly appear that the number of the offending vehicle was wrong. Nobody says that Rajula Gurjar was driving the vehicle. The Tribunal has drawn inference only on strength of the leave taken by the said driver, that too, holding that as the conscience was biting the driver, he proceeded on leave. I am sorry to record that such finding could not be recorded. In a given case, a person may proceed on leave for myriad reasons. Unless it is shown to the Court that a particular person was driving the vehicle simply on the basis of the presumption that too far fetched, it could not be held that a particular person was driving the vehicle. In case like present, if the claimants wanted to contend before the Tribunal that even if the identity of the driver

is not established, then too, the Claim Petition should have been allowed on the ground that the vehicle belonged to the Military or Union of India, then, they could have argued such case. The learned Tribunal has not recorded any finding that the driver was not necessary party, a particular person was not driving the vehicle, number of the vehicle is not established but as the vehicle belonged to the Union of India/Military, Union of India, as owner would be liable. In absence of such finding, it cannot be argued that this Court, in appeal filed by the Union of India should amend the finding and record the same in favour of the claimants. In the appeal filed by the claimants, they have simply prayed for enhancement of the amount and have not claimed that the finding recorded by the Tribunal deserves to be re-settled. In absence of any cogent and material evidence to connect the driver with the accident, I must hold that the Tribunal was unjustified in holding the driver guilty. Even in absence of any evidence in relation to number

of the vehicle, I am unable to hold that the truck was bearing No. 770-26387-K-MES. However, in view of the argument raised by Shri K.M. Patel, learned counsel for the claimants, after setting aside the entire judgment, I remand the matter back to the learned Tribunal with a direction to reconsider the entire evidence and record a finding that in absence of the driver, whether claimants would be entitled to claim compensation against the Union of India on the ground that the vehicle belonging to the Union of India was involved in the accident.

7. First Appeal No. 316 of 1989 filed by Rajula Gurjar and two others is allowed. The matter is remanded back to the lower court. The appeal filed by the claimants, bearing First Appeal No. 916 of 1989 is dismissed. No costs.
8. The parties present in the Court shall appear before the Tribunal on 25th September, 2007. It shall be the duty of the parties to file a copy of this order before the Tribunal enabling it to know as to what it is required to do. Any finding recorded in this matter except the

finding relating to non-involvement of the driver and non-establishment of the number of the vehicle would not bind the learned Tribunal. The Tribunal shall be free to re-record the findings only on the issue that if the vehicle of the Union of India/Military is involved, whether Union of India would be answerable to the claim made by the claimants.

[R.S. GARG, J.]

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